



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

NOV 14 2014

Ref: 8P-W-UIC

Mary E. Greene  
Senior Managing Attorney  
Environmental Integrity Project  
1000 Vermont Avenue NW, Ste 1100  
Washington, D.C. 20005

Re: Response to Environmental Integrity Project's August 13, 2014, correspondence regarding SDWA requirements applicable to diesel fuel use in Hydraulic Fracturing

Dear Ms. Greene:

Thank you for your August 13, 2014, letter to Shaun McGrath, Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 8 in which you express concern about the injection of diesel fuels for hydraulic fracturing. Mr. McGrath has requested that I respond to your letter on his behalf.

Natural gas, if produced responsibly, has the potential to provide the country with many benefits, including improved air quality, stable energy prices and greater certainty about future energy reserves. The agency is committed to ensuring natural gas production, including hydraulic fracturing, occurs in a manner that is environmentally sound and protects the health of all Americans.

The EPA appreciates your letter and the Environmental Integrity Project's (EIP) report, "Fracking Beyond the Law." Your report and letter suggest that a number of operators reported hydraulically fracturing wells with diesel fuels without indication that they obtained a Class II permit. In February 2014, the EPA published the permitting guidance, *Permitting Guidance for Hydraulic Fracturing Activities Using Diesel Fuels: Underground Injection Control Program Guidance #84*, to explain that any owner or operator who injects diesel fuels in hydraulic fracturing for oil or gas extraction must obtain a Underground Injection Control (UIC) Class II permit before injection, and to explain the Agency's interpretation of the statutory term "diesel fuels" for permitting purposes. During the guidance development, the EPA engaged in outreach with all UIC Class II permitting authorities and key industry stakeholders to inform them of the Class II requirements' applicability for diesel fuels hydraulic fracturing.

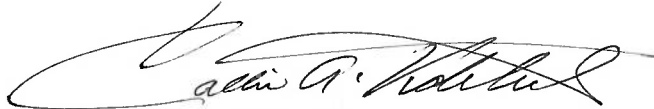
With the publication of the guidance, the EPA will continue to work with state and tribal Class II permitting authorities to ensure that use of diesel fuels in hydraulic fracturing is properly permitted. Specifically, we continue to reach out to our state and tribal partners to ensure they are: (1) aware of the UIC program's diesel fuels definition and permitting requirements for diesel fuels hydraulic fracturing; (2) taking action to inform operators of their obligation to obtain a Class II UIC permit; and (3) utilizing

a process to prevent un-permitted diesel fuels hydraulic fracturing from occurring and taking appropriate enforcement action as needed. The EPA evaluates any allegations regarding injection of diesel fuels for hydraulic fracturing on a case-by-case basis.

In Region 8 we will continue to coordinate with all of our six State and the Fort Peck Tribe's Class II programs in achieving these three objectives through: (1) midyear evaluations of Class II program performance; (2) face-to-face meetings including Region 8's annual state/tribal UIC conference (most recently held in September 2014) and the Ground Water Protection Council's Annual Forum (most recently held in October 2014); and (3) ongoing communication by telephone and email correspondence. In addition, we have asked Class II programs which received the EIP letter co-addressed to them to examine the state-specific findings of EIP's report and fully address them, as appropriate, under their own regulatory process (e.g., see North Dakota's regulatory process described in the enclosed March 21, 2014, letter from Lynn Helms to Shaun McGrath).

Again, thank you for your letter. The EPA appreciates your concern and interest in our efforts to protect human health and the environment. The EPA remains committed to working with states and tribes to ensure that diesel fuels hydraulic fracturing is performed in a manner that does not adversely affect underground sources of drinking water and complies with the law. More information about the EPA's activities related to hydraulic fracturing can be found at [www.epa.gov/hydraulicfracturing](http://www.epa.gov/hydraulicfracturing). We have also established a hotline for individuals to report any observed environmental concerns associated with drilling operations. Citizens may call (877) 919-4EPA (toll free) or send reports by email to [eyesondrilling@epa.gov](mailto:eyesondrilling@epa.gov). Please feel free to contact Douglas Minter of my staff at (303) 312-6079 with any questions or additional concerns.

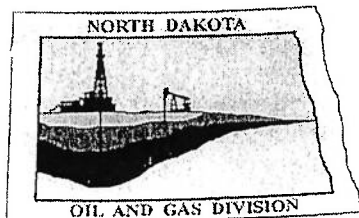
Sincerely,



Callie A. Videtich  
Acting Assistant Regional Administrator  
Office of Partnerships and Regulatory Assistance

Enclosure

cc: Jim Halvorson, Montana Board of Oil and Gas  
John Baza, Utah Division of Oil, Gas, and Mining  
Lynn Helms, North Dakota Industrial Commission  
Mark Watson, Wyoming Oil and Gas Conservation Commission  
Matt Lepore, Colorado Oil and Gas Conservation Commission



# Oil and Gas Division

Lynn D. Helms - Director

Bruce E. Hicks - Assistant Director

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

[www.dmr.nd.gov/oilgas/](http://www.dmr.nd.gov/oilgas/)

March 21, 2014

RECEIVED  
U.S. EPA Region 8  
RA's Office

MAK 25 2014

Shaun L. McGrath  
Regional Administrator  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Re: United States Environmental Protection Agency (EPA) February 2014 Memorandum "Implementation of the Safe Drinking Water Act's Existing Underground Injection Control Program Requirements for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels". North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division (NDIC) "mechanism to inform owners or operators of applicable UIC Program requirements and application deadlines" and procedure for identifying whether diesel fuel, as defined by the EPA, will be utilized in hydraulic fracturing activities.

Dear Mr. McGrath,

This letter is in response to page 5 of the February 2014 memorandum that accompanied Underground Injection Control Guidance #84 titled "Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuel" wherein EPA Regional offices are instructed to continue to coordinate with State oil and gas programs and the appropriate BLM office to establish a mechanism to inform owners or operators of applicable UIC Program requirements and application deadlines.

The NDIC is writing to inform EPA Region 8 that the NDIC has taken appropriate measures to establish a mechanism to inform operators of applicable UIC Program requirements when diesel fuel, as defined by EPA, will be utilized in hydraulic fracturing fluid or propping agents.

During the application process for a permit to drill an oil and/or gas well in North Dakota, the applicant is required to submit a Drilling Program which indicates the completion technique for the proposed well. The NDIC has instructed all parties filing applications for permit to drill that use of diesel fuel, as defined by EPA, during hydraulic fracturing of the well must be included in the completion technique information within the Drilling Program. The NDIC strategically chose the Drilling Program in anticipation that it would be prepared by a petroleum engineer and/or geologist. The Drilling Program is a technical description of the geology, wellbore construction, and wellbore completion. The evaluation of the Drilling Program, performed during the permit review process allows the NDIC to respond accordingly, based on the proposed completion technique. If diesel fuel, as defined by EPA, will be utilized during hydraulic fracturing of the well, then the oil and gas permit application will be put on hold and the applicant will be notified of the relevant UIC requirements. The applicant will also be directed to the appropriate UIC regulatory agency (i.e. Class II Primacy authority) based on the surface and/or bottom hole location of the proposed well.

Diesel is defined by EPA as follows:

- **68334-30-5 Primary Name: Fuels, diesel**  
Common Synonyms: Automotive diesel oil; Diesel fuel; Diesel oil (petroleum); Diesel oils; Diesel test fuel; Diesel fuels; Diesel fuel No. 1; Diesel fuel [United Nations-North America (UN/NA) number 1993]; Diesel fuel oil; European Inventory of Existing Commercial Chemical Substances (EINECS) 269-822-7.
- **68476-34-6 Primary Name: Fuels, diesel, No. 2**  
Common Synonyms: Diesel fuel No. 2; Diesel fuels No. 2; EINECS 270-676-1; No. 2 Diesel fuel.
- **68476-30-2 Primary Name: Fuel oil No. 2**  
Common Synonyms: Diesel fuel; Gas oil or diesel fuel or heating oil, light [UN1202] No. 2 Home heating oils; API No. 2 fuel oil; EINECS 270-671-4; Fuel oil No. 2; Home heating oil No. 2; No. 2 burner fuel; Distillate fuel oils, light; Fuel No. 2; Fuel oil (No. 1,2,4,5 or 6) [NA1993].
- **68476-31-3 Primary Name: Fuel oil, No. 4**  
Common Synonyms: Caswell No. 333AB; Cat cracker feed stock; EINECS 270-673-5; EPA Pesticide Chemical Code 063514; Fuel oil No. 4; Diesel fuel No. 4.
- **8008-20-6 Primary Name: Kerosene**  
Common Synonyms: JP-5 navy fuel/marine diesel fuel; Deodorized kerosene; JPS Jet fuel; AF 100 (pesticide); Caswell No. 517; EINECS 232-366-4; EPA Pesticide Chemical Code 063501; Fuel oil No. 1; Fuels, kerosine; Shell 140; Shellsol 2046; Distillate fuel oils, light; Kerosene, straight run; Kerosine, (petroleum); Several Others.

The NDIC and all oil and gas operators in North Dakota have anticipated this guidance for some time and are aware of the requirement to obtain a UIC permit when using diesel fuel during the hydraulic fracturing stimulation of an oil and gas well. Currently in North Dakota diesel fuel is not being utilized in hydraulic fracturing stimulations and the NDIC anticipates operators will continue not to use diesel fuel. In accordance with the NDIC's Class II primacy memorandum of agreement with EPA Region 8, the NDIC has established within the oil and gas permitting process an effective mechanism to inform owners or operators of applicable UIC Program requirements and application deadlines and to allow operators to indicate whether diesel fuel will be utilized in the completion of the oil and gas well.

If you have any questions please contact Kevin Connors at 701.328.8049.

Sincerely,



Lynn D. Helms

Director

North Dakota Department of Mineral Resources